

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481-rdd

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In the Matter of:

DELPHI CORPORATION, ET AL.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

May 7, 2009

9:12 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

HEARING re Order to Show Cause on Expedited Motion.

HEARING re Motion to Approve Expedited Motion for Interim and
Final Order Ratifying and Approving Debtors' Entry Into Fourth
Amendment to Amended and Restated DIP Credit Agreement and
First Amendment to Amended and Restated Security and Pledge
Agreement.

HEARING re Order to Show Cause on Motion for Interim and Final
Order Authorizing Debtors to (I) Enter Into Third Amendment To
Accommodation Agreement With Certain Participating DIP Lenders.

HEARING re Motion for Interim and Final Order Authorizing
Debtors to (I) Enter Into Third Amendment to Accommodation
Agreement with Certain Participating DIP Lenders.

HEARING re Proposed Off-Omnibus Hearing Agenda

Transcribed by: Sharona Shapiro

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1 A P P E A R A N C E S : (continued)

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P R O C E E D I N G S

THE COURT: Please be seated. Okay. Delphi Corporation.

MR. BUTLER: Your Honor, Jack Butler and Kayalyn Marafioti on behalf of the debtors for this off-omnibus hearing. Good morning.

THE COURT: Good morning.

MR. BUTLER: Your Honor, on the agenda that was filed for this there were four matters filed.

First the two first matters, the steering option exercise motion at docket number 16410 and the GM arrangement fourth and fifth approval motion at docket number 16411, have been adjourned by a prior agreement to the May 21st omnibus hearing.

THE COURT: All right.

MR. BUTLER: The other two matters are both financing matters. Both have been brought on for hearing today on an interim basis and both with final hearings at the May 21st omnibus hearing and both have been brought on by orders to show cause.

The first matter is the fourth amendment to the DIP credit agreement motion at docket number 16587 that was brought on for hearing by an order to show cause dated April 29, 2009 at docket number 16586. The debtors have complied with the notice provisions of that order and that evidence has been

1 filed by affidavit of service at docket number 16595.

2 Your Honor, in accordance with the terms of the
3 fourth credit agreement amendments, we're seeking interim
4 ratification and approval of these amendments subject to the
5 final hearing on May 21st. And these amendments have a number
6 of purposes, but the principal purpose of which is to amend the
7 DIP agreements in a manner that will allow the debtors to
8 participate in the Auto Supplier Support Program that was
9 announced by the U.S. Treasury as it relates to Chrysler
10 Corporation.

11 The debtors are not currently seeking to sell
12 receivables to the SPV established by General Motors
13 Corporation under the same program because we have,
14 essentially, our own private arrangements with General Motors
15 through the private temporary accelerated payment agreement
16 with GM that was entered into back in December of last year and
17 amended in January of this year which Your Honor has previously
18 approved.

19 THE COURT: Right.

20 MR. BUTLER: But with respect to the Chrysler
21 program, we do need to amend the DIP credit agreement and the
22 related security and pledge agreement to permit the transfer of
23 the Chrysler receivables through this program and to grant
24 first priority security interests in those receivables to
25 Chrysler SPV.

1 I am pleased to report that we did receive sufficient
2 DIP lender approval to enter into these amendments, should Your
3 Honor approve them on an interim and final basis. But I would
4 also indicate to Your Honor that while we have applied to sell
5 our eligible receivables to Chrysler SPV, that application is
6 still pending with Citibank, the third party servicer, as are,
7 as I'm told, a number of other applications from other
8 suppliers that have not yet been processed.

9 There has been an intervening event since we filed
10 this motion, and that is the Chapter 11 filing of Chrysler and
11 certain of its subsidiaries which occurred in this district on
12 April 30th and is now pending before Judge Gonzalez at case
13 number 09-50002 on an administratively consolidated basis.

14 In that Chapter 11 case, one of the first day motions
15 that was filed at Chrysler docket number 41 was a motion to pay
16 certain pre-petition claims of essential suppliers and continue
17 certain supplier related programs. Within that authority was
18 an authority to include participation in the Auto Supplier
19 Support Program. Judge Gonzalez approved that motion on an
20 interim basis on May 5th, subject to a final hearing on May
21 20th, the day before our final hearing on this. And that is at
22 Chrysler docket number 348.

23 Just by way of disclosure to Your Honor, the Chrysler
24 supplier motion does state, at paragraph 48, that there is the
25 potential for the Supplier Support Program to be terminated by

1 the U.S. Treasury as a result of the cases and the supplier
2 order that Chrysler is seeking on a permanent basis. But it
3 also indicates that Chrysler anticipates that the Supplier
4 Support Program will remain open for a period of time post-
5 petition, pursuant to the terms of forbearance agreements being
6 negotiated between the U.S. Treasury Auto Task Force and the
7 Chrysler SPV.

8 Therefore, Your Honor, we believe that this motion is
9 still germane. We expect to move forward, and our anticipation
10 is to participate in either or both the Auto Supplier Program
11 and/or the essential supplier order as it becomes final and as
12 we continue to work with Chrysler. Otherwise, Your Honor,
13 we'll rely on the papers for the justifications for this. We
14 think there is adequate business judgment. We think it's
15 appropriate to be able to do so under these circumstances.

16 There is another provision which I want to call out
17 to the Court in this order, which is unrelated to the Chrysler
18 matter which is actually adding a new section 8.09 to the
19 credit agreement. This is viewed, I think, by the lenders as a
20 technical amendment to call out what they believe to be the
21 case but want to clarify. And that is that it authorizes --
22 excuse me, I think it's 8.10. It authorizes and eliminates
23 any -- the agent to perform in a way that alleviates any
24 potential obstacle to the agent's recovery on the DIP facility
25 in certain foreign jurisdictions if that should become

1 necessary.

2 I refer to this provision as the parallel debt
3 provision because it provides for essentially the creation of
4 parallel debt equal to the debtors' obligations to the DIP
5 lenders to be owed to the agent in its individual capacity
6 rather than as a representative, to eliminate the technical
7 issues that could occur in certain jurisdictions without that
8 understanding.

9 The purpose of this amendment is to facilitate the
10 agent's recovery to recover on the DIP facility in accordance
11 with the documents hereunder in the event that a foreign
12 jurisdiction would not recognize the trust relationship. By the
13 way administrative agents and lending syndicates. And
14 essentially, the reason that both the debtors and the lenders
15 view this to be technical is it's simply -- essentially, by
16 agreement, it essentially codifies in foreign jurisdictions
17 what is the essential agreement between the debtors and the DIP
18 lenders in this jurisdiction. And the debtors therefore
19 thought it was appropriate to enter into that arrangement.

20 There are some other minor provisions in the
21 amendments, including how they become effective and for the
22 payment of fees and expenses. Those are all set forth in the
23 amendment and in the motion. I'll otherwise rely on the
24 papers, Your Honor, unless you have any questions.

25 THE COURT: Okay. I don't, but does anyone have

1 anything to say on this motion?

2 MR. RIELA: Your Honor, Michael Riela of Latham &
3 Watkins for the creditors' committee. The committee is still
4 reviewing and analyzing the motion and all the relief sought,
5 including the parallel debt provisions. We have no objection
6 to the interim order being entered today. But to the extent
7 that we have any concerns or objections, we'll raise them at
8 the final hearing.

9 THE COURT: Okay. All right. Well, I've reviewed
10 the motion, and in light of that review, I'm prepared to
11 approve it on an interim basis and recognize that there may be
12 contingencies to the debtors' ability to access this program.
13 But it appears to me that the rationale for the program is one
14 that fits appropriately with the debtors' relationship with
15 Chrysler. So I'll approve it.

16 MR. BUTLER: Thank you, Your Honor. Your Honor, the
17 other matter on the agenda this morning is the third
18 accommodation amendment motion. It was filed at docket number
19 16599. It was also scheduled for hearing today by an order to
20 show cause. That order was entered yesterday at docket number
21 16598. That order required hand delivery and e-mail delivery
22 by 5 p.m., just the way it was entered mid-afternoon yesterday.

23 As Your Honor knows, the principal stakeholders in
24 this case were present in a chambers conference on Tuesday. We
25 reviewed the relief with counsel to the creditors' committee.

1 This is going to be sought with counsel to the creditors'
2 committee and General Motors. At the conclusion of that
3 chambers conference we actually -- in the way of also
4 disclosure -- we actually completed e-mail service at 5:18,
5 rather than at 5 o'clock. And we got the hand courier
6 completed at 5:35 rather than at 5 o'clock. But those matters
7 were delivered, and I don't believe any of the parties present
8 in court today, which include representatives of all the major
9 stakeholders, object to this going forward and being considered
10 by Your Honor on an interim basis.

11 THE COURT: Okay.

12 MR. BUTLER: Your Honor, this is the proposed third
13 amendment to the accommodation agreement. That agreement was
14 approved originally on December 3rd at docket number 14515.
15 You approved two subsequent amendments with supplements: one on
16 February 25th at docket number 16377 and the other on April 23,
17 2009 at docket number 16575.

18 The purpose of all of these amendments and the
19 purpose of this amendment are to create an opportunity and a
20 runway for the company to negotiate with its major
21 stakeholders, including General Motors, the DIP lenders, the
22 creditors' committee, and since its intervention in these
23 cases, the U.S. Treasury Auto Task Force, about an appropriate
24 and hopefully consensual resolution to these cases. And the
25 parties are working on that.

1 We have appraised the Court of the progress that has
2 been made and the activity in connection with those matters.
3 And the reality is, for a whole series of reasons, we were not
4 able to complete the delivery of a term sheet to the DIP
5 lenders by May 4, 2009, which was a milestone. This milestone
6 has been advanced sequentially since the end of February as we
7 have continued to try to seek negotiations and move forward
8 with those negotiations with the various stakeholders.

9 Based on time tables that have been outlined, and I
10 think the parties are essentially in agreement with, in terms
11 of indicating to each other that they think they can actually
12 provide substantive term sheets, we're now asking Your Honor to
13 approve a third amendment which moves the May 4th milestone to
14 May 21st, two weeks out from today, and essentially resets the
15 existing structure that we have. I'm not going to walk through
16 that structure in detail, I think Your Honor's familiar with it
17 in terms of how all the dates would work. The outside date of
18 the accommodation agreement would be June 2nd. Under this
19 arrangement there would be a twenty basis point fee. There
20 have been work fee and expense provisions that have been agreed
21 to. As those work letters are typically and customarily
22 confidential, we provided copies to the Court of them. They're
23 consistent with prior amendments in terms of what needs to be
24 achieved here.

25 The only provision that I think that is different in

1 any material way is an acknowledgment by the debtors that in
2 connection with the pursuit of the milestones in the third
3 accommodation agreement amendment, the d4a have acknowledged
4 that they will agree to continue to explore strategic
5 alternatives for resolving the Chapter 11 cases. That is,
6 after all, the debtors' fiduciary responsibility. We have been
7 executing that responsibility on a basically 24/7 basis since
8 the confirmed plan was not consummated back in April of last
9 year. We're continuing to do so and we're continuing to work
10 with the stakeholders to do that. And we will, of course,
11 continue to observe and carry out our fiduciary
12 responsibilities in these cases in connection with that
13 process.

14 Your Honor, I think those are the material elements
15 in bringing this before the Court on an interim basis. We need
16 to obviously make this effective. Without it becoming
17 effective today, or by the end of the day tomorrow, the reality
18 is that the accommodation agreement period would end. Things
19 are moving pretty fast at this point in these cases in terms of
20 activity between the parties. This amendment, which was agreed
21 to with the agent and other members of the steering committee,
22 essentially yesterday, and was launched yesterday in a private
23 side DIP lender call, those sheets, the signature pages are due
24 this afternoon at 3 o'clock. And so we expect to obtain
25 approval from our DIP lenders today.

1 And if Your Honor will approve this on an interim
2 basis, we would expect that this would go effective this
3 evening after we're able to obtain the remaining signature
4 pages. In any event, it needs to go effective by the end of
5 the day tomorrow to solve any issues under the accommodation
6 agreement. And we'll move forward, continuing the principal
7 activity in the case at this point, which is continuing to
8 pursue our fiduciary responsibilities with our stakeholders,
9 examining strategic alternatives and negotiating about those
10 alternatives with the major stakeholders in the hope of having
11 some definitive resolution proposed to the stakeholders by the
12 week of May 21st in that period.

13 THE COURT: Okay. Does anyone have anything to say
14 on this motion that's being sought on an interim basis? Okay.
15 I've reviewed it, as Mr. Butler said. And as about half of you
16 in the courtroom know, I've also had chambers conferences with
17 key stakeholders and am familiar with, I believe, at least as
18 of a day or so ago, the status of the debtors' efforts with the
19 other parties to resolve the case.

20 And I believe, in light of all that, that this motion
21 should be granted. Obviously, there is a tension between
22 keeping the parties focused on a short term basis, as has been
23 the case over the last month to two months, and the cost of
24 that, both in terms of amendment fees and arrangement fees and
25 the stress it places on the company. On the other hand, I

1 think it's important to continue to make sure the parties are
2 truly focus, as I believe they are, based on my conferences
3 with them on the difficult but clearly not insurmountable
4 process of reaching an agreement here. So I think this is an
5 appropriate balance at this time in terms of giving the company
6 more time but keeping the parties focused. And based on what
7 I've seen and heard, the parties are dealing with each other in
8 good faith, and I'd just urge them to continue to do that and
9 to try to wrap up their discussions as promptly as practicable.

10 MR. BUTLER: Thank you, Your Honor.

11 MR. SPEAKER: Thank you, Judge.

12 THE COURT: Okay.

13 MR. BUTLER: Your Honor, that's all we have on
14 today's agenda.

15 THE COURT: Thank you.

16 MR. BUTLER: Thank you.

17 (Proceedings concluded at 9:28 a.m.)
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I N D E X

RULINGS

	Page	Line
Motion approved on interim	11	15
basis for debtors' entry		
into fourth amendment		
to DIP credit agreement		
Motion granted	15	21
approving third		
amendment to		
accommodation agreement		

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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a
true and accurate record of the proceedings.

SHARONA SHAPIRO

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Date: May 8, 2009